

## **FRIDAY UPDATE – January 20, 2006**

*The weekly update of the activities of the Indiana General Assembly  
A publication of the Indiana Judicial Center*

The General Assembly has been very active this week. Below are reports on bills of interest to the Judiciary discussed this week. If you are interested in reading the text of any bill introduced this session, you may find bill information on Access Indiana at <http://www.in.gov/apps/lsa/session/billwatch/billinfo>. Past issues of the Friday Update for 2006 are available on-line at <http://www.in.gov/judiciary/center/leg/index.html>.

### **Civil Law**

The Senate Judiciary Committee heard SB 296, Communications of sympathy and punitive damages, authored by Sen. Kenley. The first part of the introduced bill that would have prohibited a court from admitting a communication of sympathy into evidence was deleted from the bill. The remainder of the bill requires that the attorney general receive notice from the losing party when a finder of fact announces a verdict that includes a punitive damage award in a civil action. This bill would also allow the attorney general to negotiate and compromise a punitive damage award since 75% of a punitive damage award goes to the victims of violence compensation fund. The A.G.'s office testified in favor of this bill, as did the Indiana Manufacturer's Association and the Indiana Trial Lawyer's Association. The amended bill passed 10-0.

### **Criminal Law**

The House Courts and Criminal Code Committee heard HB 1024, which would increase penalties for particular kinds of kidnapping and criminal confinement. Author Rep. John Smith said that the bill was being presented for the second time. A Kokomo policeman testified in favor of the amendments. At the Prosecuting Attorneys Council's suggestion, the Committee amended the bill by leaving the kidnapping offense intact and changing criminal confinement to an A felony (a B felony under current law) if committed with a deadly weapon or resulting in serious bodily injury and a B felony if the person confined or removed is a child under 14 (present law makes a C felony) or if an automobile is used (new provision for this offense). Committee voted 11-0 to pass as amended.

The House Courts and Criminal Code also heard HB 1108, which would establish a new misdemeanor of "aggressive driving," enhance criminal recklessness if committed by "aggressive driving," and expand criminal recklessness to include any shooting into a house, not just drive-by shootings as in current law. Author Rep. Tim Brown explained that this bill is back this year after redrafting with input from the Prosecuting Attorneys Council. "Aggressive driving" is a new A misdemeanor defined as commission during a single episode of three or more specified driving infractions such as following too closely, unsafe operation, overtaking by driving on the right, unnecessary sounding of the horn, and others. Criminal recklessness will be changed to a D felony if the offender committed aggressive driving resulting in serious bodily injury and a C felony if resulting in death. Testimony from victims' family was heard, and Prosecuting Attorneys Council supported the bill. Committee passed 11-0.

The House Courts and Criminal Code heard HB 1049 concerning controlled substance crimes. This bill would expand the definition of "family housing complex" to include hotels, motels, apartment complexes, or subsidized housing buildings, and would make neglect of a dependent a C felony if it results from manufacture of cocaine, methamphetamine, or a narcotic drug or was committed in an area in which those drugs were being manufactured, delivered, or financed. Author Rep. Bell explained that the bill was intended to toughen penalties for methamphetamine manufacturing when children were present. Rep. Foley suggested that mobile home parks ought logically to be included, and other members questioned why the offense was not expanded to include any place near children including single-family subdivisions, but these concepts were agreed suitable for consideration next year. Rep. VanHaaften pointed out that the expansion of the enhancement for commission near a "family housing complex" would affect not just methamphetamine but also cocaine and other offenses. After testimony in support from the Noble County Prosecutor, and the Criminal Justice Institute Executive Director, Prosecuting Attorneys Council's Steve Johnson noted that, as Rep. VanHaaften had observed, the bill

## **FRIDAY UPDATE – January 20, 2006**

would increase penalties for many non-meth offenses and that these would be nonsuspendible penalties. The bill passed 11-0 without amendments.

House Courts and Criminal Code heard HB 1207 concerning home improvement fraud, which would expand the home improvement offense to include misrepresentations about the likelihood of fire or structural damage if repairs were not made, concealing contractor addresses or phone numbers, failure to provide copies of promised warranties, and other sorts of conduct. Author Rep. Phyllis Pond explained that the changes were necessitated by increased home improvement predation on older citizens, and a former Allen County deputy sheriff testified in support of her point. Concerns of the Homebuilders Association were presented, but the Committee agreed the amendments would not affect honest contractors. The bill passed 10-0.

The Senate Corrections, Criminal, and Civil Matters Committee heard several bills concerning sex offenders. Various provisions of these bills were merged together resulting in three bills, SB 6 Lifetime parole for child molesters, SB 12 DOC administration of sex offender registry, and SB 246 Sex offenders. The Committee heard testimony on these matters, adopted a few amendments by consent, and recessed until the next day to allow members time to review the changes prior to voting on the bills. When the meeting resumed, Committee staff gave a brief overview of the proposed amendments to these bills based on discussions held at the last Committee meeting. The Committee discussed these amendments and passed each bill as amended out of Committee (SB 6: 9-0) (SB 12: 9-0) (SB 246: 10-0). Below is a brief summary of the provisions contained in these bills as passed by the Committee.

**SB 6 Lifetime parole for child molesters:** States that the parole board may require a parolee who is an offender defined in IC 5-2-12-4 to be monitored by GPS 24 hours each day and the parole board shall require a parolee who has been convicted of child molesting and was at least 18 at the time of the offense to be monitored by GPS 24 hours each day. Removes language that permitted a waiver for offender to live within one mile of victim. Creates a new crime if a person supervised on lifetime parole who knowingly or intentionally violates a condition of parole that involves direct or indirect contact with a child less than 16 or with the victim of the sex crime committed by the person if certain circumstances exist. Provides that these provisions apply to those whose parole supervision is transferred to Indiana under the Interstate Compact. Provides that if a person is subject to lifetime parole and is also being supervised by a court, probation, community corrections or similar agency the parole board may also supervise or permit the other agency to supervise during the period the agency is required to supervise the person. These provisions apply to crimes committed after June 30, 2006. NOTE: The Committee did discuss whether these provisions should also apply to probation and indicated that this would need to be accomplished by a second reading amendment. Also, the Committee Chair noted that due to the potential fiscal impact, this bill would be recommitted to Senate Appropriations for further consideration.

**SB 12 DOC administration of sex offender registry:** Transfers oversight of sex offender registry to DOC and requires DOC to provide training to judges, prosecuting attorneys, probation officers, community correction officials and others on the sex offender registry. Requires the registry to be updated daily. Permits DOC to reduce credit time for a sex offender who does not participate in the SOMM treatment program. Defines principal residence and temporary residence for purposes of registry. Makes several changes to the registration requirements. Requires law enforcement to physically visit each sex offender at least one time per year and sexually violent predators at least once every 90 days. Requires offenders to register and be photographed at least once per calendar year and creates criminal penalties for failure to do so. Requires offenders to obtain and keep a valid driver's license or state identification card with criminal penalties for a violation. Requires sexually violent predators to notify law enforcement regarding the offender's whereabouts if spend more than 72 hours away from principal residence and creates criminal penalties for failure to do so.

**SB 246 Sex offenders:** Defines principal residence. Amends the definition of sexually violent predator. Adds a criminal penalty for a sexually violent predator to knowingly or intentionally work or volunteer to work on school property, youth program center, or public park. Amends IC 35-41-4-2 to allow prosecutor to bring an otherwise barred case within one year of the date in which the state first discovered or could have discovered evidence sufficient to charge an offender through DNA evidence with a Class B or C felony. Adds a definition of

## **FRIDAY UPDATE – January 20, 2006**

“offender against children” and “resides”. Provides that an offender against children who knowingly or intentionally resides within 1000 feet of school property, youth program center, public park, or within 1 mile of the victim commits a sex offender residency offense, a class D felony. Permits the state to seek a sentence as a repeat sexual offender for offenses committed in other jurisdictions that is substantially similar to sex offenses in Indiana.

### **Family & Juvenile Law**

The Senate Judiciary Committee heard SB 153, concerning the collection of child support at the state level. Sen. Lawson, author, explained this legislation directs all wage withholding orders, not just those from employers with 50 or more employees, be sent to and disbursed by the state’s centralized support program beginning Jan. 1, 2007. Cash monies would be the only exception. They would continue to be accepted by the local clerk. The fee for support payments is set at \$26.00 per year, with the monies either going to the clerk for collection of cash payments or the state if an income withholding order entered. The bill changes all references from wage assignment to income withholding.

An amendment proposed by Sen. Lawson and adopted by the committee amends the distribution of incentive monies for collection of child support. Prosecutors would continue to get 33%, but the State would receive 22%, Clerk 22%, and County 22% of incentive monies. If service levels agreements between the state and county not met, the state could withhold the incentive payments also. The change in the incentive money distribution was explained by acknowledging the bulk of child support payments (70%) now go through the state under income withholding orders.

Sen. Steele, Sen. Lanane and Sen. Ford questioned whether the state’s central collection unit could be take care of support as expeditiously as local clerks. Wendy Yerkes, Director, Child Support Bureau, Department of Child Services indicated most child support payments are going through the state, the state could use electronic funds transfer and debit cards to get monies to mothers and children in a quick manner. The state plans to have state-of-the-art call center to get answers when litigants and attorneys need answers to questions about support payments. In addition, local clerks would save monies with less use of supplies to print checks and postage to mail checks. Scott Tittle, Special Counsel to Governor Daniels also testified in favor of the bill, as did a representative of county clerks. The legislation passed as amended 6-4. Because of the financial considerations, the proposed new law was recommitted to the Senate Finance Committee.

SB 139, which makes numerous changes in juvenile law, was also heard by the Senate Judiciary Committee. Sen. Lawson, author, explained it redefines case worker as case manager, redefines “emergency placement” for record check purposes, amends laws concerning licensing of group homes, strengthens the impact of paternity affidavits, imposes time limits in CHINS and Termination cases. Amendments to the bill permitted the DCS to investigate violations of childcare regulations when child care workers have committed abuse or neglect and to define wardship under Indiana law.

James Payne, Director, Department of Child Services, said this bill also amends the ICWIS rules to permit sharing of information on families across county lines. It expands the definition of emergency placement to include the time period up to the first court hearing to permit the use of placement with relatives. An amendment defines wardship for the first time under Indiana law to permit the entity awarded wardship to make decisions concerning the removal of a child from life support machines if a child is severely injured in a CHINS case.

The legislation imposes time limits in CHINS and Termination cases. Judge Payne said the time limits are an effort to address issues in the next Child Family Service Review to be conducted in Indiana by the Department of Health and Human Services. It requires a court to finish a factfinding hearing within 30 days of the filing of a CHINS petition, permits the DCS to request a judgment be entered within 30 days after the close of evidence in a CHINS case, and requires a court to complete a dispositional hearing not more than 45 days after the date the court finds a child is a CHINS. It also provides the courts shall complete the hearing on a petition in a termination case not more than 180 days after the petition is filed. In addition, it provides that CHINS review hearings will be

## **FRIDAY UPDATE – January 20, 2006**

conducted every 3 months, not every 6 months as current law requires. There are no penalties if the time limits in the statute are not met. The bill permits courts to incorporate a finding or a conclusion from a predispositional report in the court's dispositional or termination decree. It also provides that certain case reports are to be made available to foster parents.

This bill requires the person attending the child's birth to explain to the birth mother and putative father the consequences of signing a paternity affidavit, including child support, parenting time. The legislation permits DCS to file the affidavit with the court. The paternity affidavit may not be rescinded more than 60 days after its execution, unless a court has determined that fraud, duress or material mistake of fact existed in the execution (which is present law) and the man who is a party to the affidavit requested a genetic test. No other persons may request the genetic test. The executed paternity affidavit conclusively establishes the man as the legal father of a child without any further proceedings.

Sen. Ford questioned whether or not attorneys would appeal cases if the time limits in CHINS and Termination cases were not met. He wondered if the time limits could be a guideline. Sen. Lanane, a former juvenile court judicial officer, wondered if it was really practical to hear these cases faster and whether or not public defenders would be appointed. He was concerned whether holding a factfinding within 30 days would drive out private counsel in CHINS cases. Sen. Broden expressed unease about doubling the number of review hearings in CHINS cases to every three months and the need for more juvenile court judicial officers and case managers.

He was worried about due process violations if hearings were not held in a timely fashion. Sen. Long stated children are suffering and need to move through the system faster, but these time limits may need to be looked at next year if they are not working. Judge Payne said the longer children are in care the more expense that occurs. There was some discussion of a second reading amendment to increase the time limit on factfinding and decrease it when the judgment would be required. The bill passed as amended, 11-0.

### **Miscellaneous**

The Senate Judiciary Committee heard SB 143, explanation of proposed constitutional amendments, authored by Sen. Dillon. Sen. Dillon explained that this bill arose from a complicated constitutional amendment proposed about property taxes in 2004. He had several constituents complain to him that they didn't know or understand what they were voting on. He thought the attorney general could provide a neutral summary of any future amendments, in 200 words or less. There was a lot of discussion on the use of the word neutral, as well as who should draft the summary—the attorney general or LSA. Sen. Dillon had a very articulate constituent testify about this problem. Of interest to judges, while that constituent was at the podium, Sen. Long asked if the constituent had a similar problem when voting on the retention of judges. The constituent said it might be helpful to have a short biography of the judge on the ballot, as well as short summaries of a few key decisions. Based on all of the discussion, the bill was tabled until the next meeting, to allow LSA to redraft it based on the wishes of the Committee about the constitutional amendment process.

### **Probate Law**

The Senate Judiciary Committee heard SB 114, probate and trust matters, authored by Sen. Zakas. He testified that sections 1 and 2 of the bill are to clarify a bill passed last year on intestate succession and the definition of remainder, and thus are retroactive. He asked Diane Kennedy, representing the ISBA, to explain the remaining sections. Section 3 deals with the powers of the personal representatives in unsupervised estates, and allows them to deal with retirement plans and other similar assets and expands and clarifies their powers. Section 4 is a response to changes made by the uniform principle and income act passed a few years ago, and makes it clear that unless the will provides otherwise, any income will go to the residuary beneficiary. Section 5 makes changes to the conflict of interest provisions, and would allow a trustee to "self deal" without court permission if the trust provides for such self-dealing or if all of the beneficiaries give written authorization (as amended by the committee). The bill passed 7-0 as amended.